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MAY 15 2003

Federal Communications Commission
Office of Secretary

May 15, 2003

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Ex Parte Presentation, CC Consolidated Docket Nos. 99-273, 92-105 and 92-237

Dear Ms. Dortch:

Enclosed for filing are three copies of a presentation made on May 15, 2003 to Greg Cooke, Rodney McDonald, and Darryl Cooper of the Policy Division of the Wireline Competition Bureau on behalf of Metro One Telecommunications, Inc., by its attorney, Peter A. Casciato.

Addressed at the meeting were issues raised in the above-captioned dockets relating to pricing and resale of directory assistance listings as set forth in the attachment hereto.

Should you have any questions concerning this matter, please contact the undersigned.

Very truly yours,

Peter Casciato

Peter A. Casciato
Attorney for Metro One
Telecommunications, Inc.

Enclosure

cc: Greg Cooke
Rodney McDonald
Darryl Cooper

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MAY 15 2003

Federal Communications Commission
Office of Secretary

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on the Commission's Own Motion Into Competition for Local Exchange Service.	R.95-04-043
Order Instituting Investigation on the Commission's Own Motion into Competition for Local Exchange Service.	I.95-04-044

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COMMMENTS OF LSSI CORP., METRO ONE TELECOMMUNICATIONS, INC. AND WORLDCOM, INC. ON THE SBC PACIFIC BELL AMENDED DIRECTORY ASSISTANCE LISTING INFORMATION SERVICE ("DALIS") COST STUDY

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April 17, 2002

Summary

The purpose of this proceeding is "expeditiously to set cost-based prices for DA services" [directory assistance listing information services] offered by SBC Pacific to competitive directory assistance providers. D.02-02-025 at 16. The Commission faces a clear choice concerning the pricing of DALIS. SBC California's cost study proposes what it calls "market-based pricing," not cost-based pricing as required by D. 02-02-05. The Interested Parties, in contrast, propose that the price for DALIS be based on forward-looking economic cost, as embodied in the Total Element Long Run Incremental Cost ("TELRIC") methodology adopted by the FCC for UNEs and interconnection.

By definition, the true economic cost to SBC California of access to directory listing data is the forward-looking economic cost of providing DALIS. As a result for both economic and public policy reasons, SBC California's DALIS prices should reflect its forward-looking economic cost, *i.e.*, costs that a firm *with SBC California's scope and scale* would experience entering a competitive market. Given the unique advantages that SBC California possesses as a legacy of its former monopoly franchise and its continuing dominance in the local exchange market (which is the root source of directory listing data), any other pricing standard will allow SBC California to leverage its market power to disadvantage potential competitors.

Specifically, the Joint Commenters recommend the following prices based on the analysis of SBC Pacific's costs by its economic expert, Terry Murray, which prices include a mark-up to recover shared and commission cost mark-up for wholesale products such as UNEs of 21%, the current Commission approved shared and commission cost make-up for SBC California. See D.02-09-049.

Rate Element	Units	Revised Cost	Price
Recurring (Update listing files)	Per Listing	$0.00072	$0.00087
Optional Tape Delivery	Per Tape	$13.32	$16.12
Non-Recurring (Base File)	Per Base File Order	$2,954.37	$3,574.79

Note: Price includes 21% markup for common costs.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Own Motion Into Competition for Local Exchange Service.	R.95-04-043 (DALIS Cost Phase)
Order Instituting Investigation on the Commission's Own Motion into Competition for Local Exchange Service	I.95-04-044

COMMENTS OF LSSI CORP., METRO ONE TELECOMMUNICATIONS, INC. AND WORLDCOM, INC. ON THE SBC PACIFIC BELL AMENDED DIRECTORY ASSISTANCE LISTING INFORMATION SERVICE ("DALIS") COST STUDY

LSSi Corp. ("LSSi"), Metro One Telecommunications, Inc. ("Metro One"), and WorldCom, Inc. ("WorldCom") (collectively "Joint Commenters"), by their attorneys, hereby submit their Comments on the SBC Pacific Bell Telephone Company's ("SBC Pacific" or "SBC California") Amended Directory Assistance Listing Information Cost Study.

I. Introduction

The purpose of this proceeding is "expeditiously to set cost-based prices for DA services" [directory assistance listing information services] offered by SBC Pacific to competitive directory assistance providers. D.02-02-025 at 16. The Commission faces a clear choice concerning the pricing of DALIS. SBC California's cost study proposes what it calls "market-based pricing," not cost-based pricing as required by D. 02-02-05.[1] The Joint Commenters, in contrast, propose

[1] Reply of Pacific Bell Telephone Company (U 1001 C) to LSSI Corp., Metro One Telecommunications, Inc., and WorldCom, Inc.'s Motion to Strike New Material in the SBC Pacific Bell June 6, 2002 Amended Directory Assistance Listing Information Service ("DALIS") Cost Study and for a Ruling Clarifying that a Price for DALIS Will Be Established in this "Phase" of this Proceeding, August 23, 2002, at 2 ("SBC Pacific Bell has always argued that market-based pricing is appropriate, and will present facts and arguments to support that position when that issue is joined.").

that the price for DALIS be based on forward-looking economic cost, as embodied in the Total Element Long Run Incremental Cost ("TELRIC") methodology adopted by the FCC for UNEs and interconnection.

By definition, the true economic cost to SBC California of access to directory listing data is the forward-looking economic cost of providing DALIS. As a result, for both economic and public policy reasons, SBC California's DALIS prices should reflect efficient, forward-looking economic cost, *i.e.*, costs that a firm *with SBC California's scope and scale* would experience entering a competitive market.[2] Given the unique advantages that SBC California possesses as a legacy of its former monopoly franchise and its continuing dominance in the local exchange market (which is the root source of directory listing data), any other pricing standard will allow SBC California to leverage its market power to disadvantage potential competitors.

The FCC has repeatedly found that incumbents such as SBC California have unique and privileged access to directory assistance data and must provide access to that information on a nondiscriminatory basis. Indeed, paragraph 15 of the FCC's *UNE Remand Order*[3] specifically included "Operator Services/Directory Assistance databases" among the call-related databases that must be unbundled. The FCC has also reaffirmed that incumbents must "make available to unaffiliated entities all of the in-region telephone numbers they use to provide nonlocal directory

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[2] This approach to developing forward-looking cost estimates is common to both the FCC's "TELRIC" methodology (47 C.F.R. § 51.505(b)) and the Total Service Long Run Incremental Cost ("TSLRIC") methodology embodied in the Consensus Costing Principles agreed to by Pacific Bell and other parties and adopted by this Commission in the OANAD proceeding (D.95-12-016, Appendix C; *see especially* Consensus Costing Principle No. 3).

[3] FCC 99-238, *Third Report and Order and Fourth Further Notice of Proposed Rulemaking*, CC Docket 96-98, adopted September 15, 1999 (hereafter "*UNE Remand Order*").

assistance service at the same rates, terms and conditions they impute to themselves"[4] and "comply with the nondiscrimination requirements set forth in section 272(c)(1)."[5]

SBC Pacific's so-called "market-based" prices do not meet these standards, as this Commission has previously concluded.[6] In fact, "market-based" prices allow SBC California to exploit the market power that it possesses by virtue of the legacy of its former legal local exchange monopoly. Indeed, as demonstrated infra, SBC California's proposed "market-based" prices far exceed even its own claimed cost to provide DALIS. The company's desire to impose such high prices provides *prima facie* evidence that DALIS is not offered in a competitive market. Instead, cost-based pricing is the best means to ensure that SBC California complies with the nondiscrimination requirements of the Act and the FCC's orders.

Specifically, the Joint Commenters recommend the prices in Table 1 below, based on the analysis of SBC Pacific's costs by its economic expert, Terry Murray, of Murray & Cratty, LLC, which prices include a mark-up to recover shared and commission cost mark-up for wholesale products (such as UNEs) of 21%, the current Commission-approved shared and common cost mark-up for SBC California. See D.02-09-049.

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[4] FCC Memorandum Opinion and Order, *In the Matter of the Petition of SBC Communications Inc. for Forbearance of Structural Separation Requirements and Request for Immediate Interim Relief in Relation to the Provision of Nonlocal Directory Assistance Services, et al.*, CC Docket No. 97-172, DA 00-514, adopted April 11, 2000 ("*FCC Forbearance Order*") at ¶ 2.

[5] *Id.* at ¶ 15.

[6] D.01-09-054 at 10 ("the market pricing [for DALIS] which Pacific proposes in this arbitration is inconsistent with the FCC's directives.").

Table 1

Rate Element	Units	Revised Cost	Price[7]
Recurring (Update listing files)	Per Listing	$0.00072	$0.00087
Optional Tape Delivery	Per Tape	$13.32	$16.12
Non-Recurring (Base File)	Per Base File Order	$2,954.37	$3,574.79

II. Background

In accordance with the February 21, 2002 ruling of Assigned Administrative Law Judge ("ALJ") Thomas R. Pulsifer, SBC Pacific filed and served, on March 25, 2002, an "Updated Directory Assistance Listing Information Service Cost Study" ("March 2002 Update") purporting to identify and update its costs of furnishing competitors with DALIS in compliance with Decision ("D.") 97-01-042.[8] Once discovery was completed on this update, parties were to file their comments on the updated study and the Commission was to adopt prices based on those costs.

The vagueness of SBC Pacific's March 2002 Update necessitated considerable discovery from Joint Commenters, culminating in an ALJ Order compelling SBC Pacific to provide interested parties with SBC cost studies for other states because the parties suspected – as later confirmed by those studies – that SBC Pacific's recurring costs were wildly exaggerated. At that point and in face of pending depositions set for May 10, 2002, SBC Pacific advised the parties

[7] All prices include 21% markup for common costs.

that it was amending its March 2002 Update, a process which took a month and culminated in the submission of not only further revisions to the March 2002 Update, but also an entirely new cost study with new cost categories in June, 2002 ("June 2002 Update").

One portion of the June 2002 Update provided an estimate of the cost that SBC California actually expects to incur to provide DALIS as a service on a forward-looking basis.[9] That aspect of the study was a revised version of the March 2002 Update, which itself was actually an update to the material that SBC California previously presented to the Commission. As discussed in the attached expert declaration of Terry Murray, an economist specializing in analysis of regulated industries, this portion of the June 2002 Update consisted primarily of costs for a product support staff,[10] "database maintenance" costs for time spent correcting listings errors identified by DALIS customers,[11] and the computer processing time needed to extract update records.

In this study, SBC California attempted to develop the total cost that it will incur to provide DALIS to seven customers, each of which would receive 19 update files per month. SBC California then divided that cost by an estimate of the total DALIS records supplied each month. However, in doing so, SBC California exaggerated its forward-looking cost in at least four important respects:

- It underestimated the number of DALIS records per month.

[8] D.97-01-042 provides that "Pacific and GTEC shall provide nondiscriminatory access to their DA database listings to all competitors including third-party database vendors and shall provide access by readily accessible tape or electronic format to be provided in a timely fashion upon request with the determination of appropriate cost recovery for the preparation and delivery of the information to be addressed in the OANAD proceeding." Ordering Paragraph 8. As prescribed by that Decision, this issue initially was to be addressed in the OANAD proceeding. However, following several years of delay, the Commission transferred the matter to the Local Competition docket for resolution. **See** D.02-02-025.

[9] These costs are what SBC California characterizes as its "TSLRIC" DALIS service study results. Deposition, 1/24/03, Pearsons, Tr. 6-7.

[10] SBC California 6/6/02 DALIS study, p. 4, lines 2-5b.

- It overstated the cost of computer processing time.
- *It assumed that numerous, unsupportable layers of manual employee work effort will* be involved in providing "maintenance" and "customer support.
- It included the cost for providing the cost of manually processing physical tapes that are shipped to DALIS customers when, in fact, many DALIS customers already receive those records in an electronic feed (or would like to do so.)

Murray Declaration at ¶ 16. As Ms. Murray states, each of these errors must be corrected before the Commission can make any use of this portion of the SBC California DALIS cost study to arrive at cost-based prices for DALIS.

Second, as Ms. Murray discusses, SBC California's June 2002 Update to its analysis of DALIS costs introduced an entirely new layer of data acquisition, storage and maintenance costs that did not appear in its prior cost studies, lumping together several millions of dollars of "costs." SBC California refused to state how these costs are caused by existing DALIS customers or how they should be assigned to those customers. Murray Declaration at ¶ 12. This recalcitrant behavior was finally explained at deposition where SBC California made the stunning, preposterous revelation that its data acquisition, storage and maintenance costs are based on a <u>hypothetical</u> assumption that SBC California does not exist as a retail provider. <u>Id. at ¶ 13.</u> Instead, the costs result from a curious exercise in which SBC California apparently instructed its employees to assume that they had no access whatsoever to existing SBC California listing data and instead must purchase those data from other sources and then build new systems to house the listing information and keep it up-to-date. <u>Id.</u>

[11] SBC California 6/6/02 DALIS study, p. 4, lines 10-10d.

As should be evident, this portion of SBC California's June 2002 Update is not a study of the company's own forward-looking economic costs at all, nor is it a study of the forward-looking economic costs of a firm with SBC California's scale and scope. As a result, the Commission should disregard this aspect of the SBC California DALIS study in its entirety. A study of the costs of a hypothetical wholesale-only provider of DALIS does not provide a basis for cost-based nondiscriminatory pricing of DALIS nor does it comply with the TELRIC methodology. Instead, the Commission should endorse the only verifiable cost data in the record which is that submitted by the Joint Commenters and, in turn, adopt the prices proposed by the Joint Commenters which are based on forward-looking economic costs for a firm with SBC California's scale and scope and include a mark-up for shared and common costs.

III. The Commission Should Establish Cost-Based, Nondiscriminatory Prices for DALIS

DALIS may or may not be a UNE in California, but the Commission has clearly identified it as a wholesale monopoly building block.[12] SBC California provides DALIS as a wholesale product to direct competitors under conditions that give SBC California both the incentive and the ability (absent regulatory controls) to gain an unfair competitive advantage.

In its decision in the MCImetro/ Pacific Bell arbitration, (A.01-01-010), the Commission acknowledged and acted upon the FCC's prior findings concerning the source of this potentially unfair advantage:

> The FCC found that incumbents enjoy a competitive advantage with respect to the provision of directory assistance service as a result of their legacy as monopoly providers of local exchange service, and their "dominant position in the local exchange and exchange access markets."[13]

[12] D.99-11-050 (released November 23, 1999) identified directory assistance listings as MBBs for imputation purposes and OS/DA as a UNEs. D.99-11-050 at 268, COL 92, and Appendix A at 4.

This monopoly-born competitive advantage provides an incumbent such as SBC California with "access to a more complete, accurate and reliable database than its competitors."[14] This is because SBC California obtains most listings "for free" as an artifact of its control of local exchange service to most customers in California. Moreover, when competitors do provide service to California end-users, they typically provide their listing data to SBC California in exchange for, *e.g.*, having an SBC affiliate provide a white page listing and directory delivery. See e.g. MCI Metro/PacBell Interconnection Agreement. Thus, SBC California has more direct and complete access to DALIS data than any potential competitor currently possesses or will possess for the foreseeable future.

Both this Commission and the FCC have recognized the need to ensure that SBC California does not use its market power to establish unreasonable prices for directory listings and thereby to disadvantage competitors. As the Commission observed:

> Even if DAL is not a UNE, pricing of DAL is subject to strict nondiscrimination requirements under the Act and FCC orders. As the FCC recognized in its DAL Provisioning Order, this nondiscriminatory access requirement extends to pricing. In its order, the FCC recognized that ILECs continue to charge competing DA providers discriminatory and unreasonable rates for DAL. Although the FCC declined to support a specific pricing structure for DAL, it encouraged states to set their own rates consistent with the nondiscrimination and reasonable pricing requirements of Section 251(b)(3).[15]

Likewise, the FCC's *DAL Provisioning Order* does indeed make clear that pricing for directory assistance listings must be nondiscriminatory:

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[13] D.01-09-054 at 7, quoting *FCC Forbearance Order* at fn. 42.

[14] *FCC Forbearance Order* at ¶ 2.

[15] D.01-09-054 at 7, citation to *Provision of Directory Listing Information under the Telecommunications Act of 1934, As Amended*, CC Docket No. 99-273, FCC 01-27, released January 23, 2001 ("*DAL Provisioning Order*") omitted.

> Section 251(b)(3) of the Act and the Commission's rules prohibit LECs from charging discriminatory rates, for access to DA databases, to competing directory assistance providers that fall within the protection of that section (i.e., those that provide telephone exchange service or telephone toll service). Thus, LECs must cede access to their DA database at rates that do not discriminate among the entities to which it provides access. Further, failure to provide directory assistance at nondiscriminatory and reasonable rates to DA providers within the protection of section 251(b)(3) may also constitute an unjust charge under section 201(b).[16]

The FCC specifically requires that the incumbent's price to competitors for directory assistance data cannot be higher than the cost that it imputes to its own nonregulated operations.[17] But, that requirement alone is not a safeguard for competition that accomplishes the purposes of the Act, as interpreted by the U.S. Supreme Court. As Ms. Murray notes in her declaration, at the level at which SBC reports its financial results to the investment community, such intracompany transfers are entirely invisible. "Such transfers from one corporate pocket to another do not change SBC's reported earnings at all and are therefore not a meaningful restraint on SBC's behavior." Murray Declaration at ¶ 24. Thus, as Ms. Murray further explains,

> the best means to ensure that SBC California does not discriminate between its operations and its competitors' operations is to ensure that DALIS is available to competitors at the same cost that SBC California experiences. Forward-looking economic cost, unlike transfer pricing to affiliates, establishes an economically meaningful benchmark for nondiscrimination that promotes fair competition and prevents SBC California from exploiting its legacy monopoly power over this critical input.[18]

IV. The Commission Should Reaffirm Its Rejection of "Market-Based" Pricing for DALIS

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[16] *DAL Provisioning Order* at ¶ 35.

[17] Even if imputation were otherwise a sufficient safeguard (which it is not), it would not be a remedy in this case as SBC California apparently does not believe that it has any obligation to impute its reported DALIS costs. *See* SBC California Response to Data Request Set 2, Request 11 (SBC California discovery responses cited herein are provided as part of Exhibit TLM-2) and Deposition, 1/24/03, Pearsons, Tr. 194.

[18] Id. at 12.

1. There Is Neither Policy Nor Precedent Supporting SBC Pacific's Contorted "Market-Based" Pricing

In D.99-11-050 the Commission adopted a cost-based pricing mechanism for UNEs which bases prices on TELRIC plus a mark-up to recover shared and common costs.[19] The Commission's pricing mechanism is consistent with the FCC's pricing rules[20] and further FCC findings. The pricing mechanism should be straightforwardly applied in this proceeding. That is, once the cost of DALIS is determined, that cost should be marked up by a reasonable allocation of shared and common costs.

In the FCC's *DAL Provisioning Order*, the FCC confirmed that the states had the right to set state rates for DALIS, but that such rates were subject to its Title II requirements of reasonableness and nondiscrimination. Id. at para. 38. In particular, the FCC stated that any such rates must be charged on a nondiscriminatory basis among the takers, or such rates would run afoul of Sections 251(b)(3) and 201(b) of the Communications Act of 1934, as amended. This nondiscrimination and reasonableness requirement also applies to require ILECs to treat all takers on equal footing with the ILECs themselves. That is, the rates, terms and conditions of DALIS the ILEC applies to competing providers must not discriminate or be unfavorable in relation to the ILEC's provisioning of such services to itself. In describing the standard for nondiscriminatory access, the FCC has stated that "any standard that would allow a LEC to

[19] 19% in D.99-11-050 (at 2), more recently changed to 21% in D.02-09-04 (at 2).

[20] See 47 CFR Sec. 51.505.

provide access to any competitor that is inferior to that enjoyed by the LEC itself is inconsistent with Congress's objective of establishing competition in all telecommunications markets."[21]

In contrast, there is no basis to believe that SBC California's proposed DALIS prices reflect the levels that would pertain in a *competitive* retail market, much less a competitive *wholesale* market. The best available evidence on this point is how well the margins over cost included in SBC California's proposed prices track with the return levels that are common in competitive markets. TELRIC includes a market-based return on SBC California's economic cost; therefore, TELRIC-based prices approximate the prices that a firm operating in a competitive market might charge. If SBC California's proposed prices substantially exceed TELRIC-based prices, that fact is itself an important indication that SBC California does not operate in a competitive market for the provision of DALIS. Murray Decl. at ¶¶ 28-29.

1. The Murray Analysis Clearly Demonstrates That SBC California's "Market-Based" Pricing Is An Anticompetitive Sham.

As Ms. Murray demonstrates in her declaration, SBC California's proposed market-based DALIS price of $0.0585 per listing bears no congruity to its own claimed forward-looking economic cost for DALIS of *** **PROPRIETARY $ END PROPRIETARY*****.[22] Adding the currently authorized 21% shared and common cost markup to SBC California's estimate of the per-listing cost for DALIS would do little to close the gap between the allegedly "market-based" price and a cost-based price for the same function. A 21% markup added to SBC California's per-listing TSLRIC would produce a "cost-based" price of *****BEGIN**

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[21] See, *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Provision of Directory Listing Information under the Telecommunications Act of 1934, As Amended,* CC Docket Nos. 96-115, 96-98, and 99-273, Third Report and Order, Second Order on Reconsideration, and Notice of Proposed Rulemaking (rel. September 9, 1999), ¶ 129.

PROPRIETARY $ END PROPRIETARY ***, which is still roughly an order of magnitude lower than SBC California's proposed "market-based" price. Murray Decl. at ¶ 30.

Even so, as Ms. Murray states, this level of analysis gives excessive credence to any SBC California claim that its proposal is justified as "market-based." SBC California's deponents were unaware of any attempt by the company to study what a market-based price for DALIS would be.[23] SBC California apparently has not performed even the basic step of defining what market it had in mind, let alone performing an actual analysis of prices in that market. SBC California's notion that simply setting prices at a level it finds attractive with no supporting analysis is a "market-based" approach once again indicates that SBC California does not operate in a competitive market. As Ms. Murray concludes,

> regardless of whether DALIS is considered a UNE, there are compelling reasons for the Commission to use forward-looking economic cost as the benchmark for determining whether SBC California's prices to competitors for this product are nondiscriminatory. The cost to SBC California for the same functionality is forward-looking economic cost; moreover, even so-called "market-based prices" would reflect forward-looking economic cost *if the product were offered in a competitive market.* Even SBC California's own, inflated version of TSLRIC demonstrates that its proposed prices to competitors for DALIS far exceed forward-looking economic cost and thus far exceed the prices that would prevail if SBC California offered these functions in a truly competitive market. For all of these reasons, I conclude that SBC California's proposed prices are discriminatory and that the Commission should set the prices for DALIS at (properly calculated) forward-looking economic cost plus a markup for forward-looking shared and common costs.

Murray Declaration at ¶ 32, emphasis in original. Ms. Murray's conclusions are consistent with FCC findings when it implemented the TELRIC-based pricing requirement for UNEs,

> Adopting a pricing methodology based on forward-looking, economic costs best replicates, to the extent possible, the conditions of a competitive market. In addition, a forward-looking cost methodology reduces the ability of an incumbent

[22] Murray Declaration at 13.

[23] Deposition, 1/24/03, Pearsons, Tr. at 179-180.

> LEC to engage in anti-competitive behavior. Congress recognized in the 1996 Act that access to the incumbent LECs' bottleneck facilities is critical to making meaningful competition possible. As a result of the availability to competitors of the incumbent LEC's unbundled elements at their economic cost, consumers will be able to reap the benefits of the incumbent LECs' economies of scale and scope, as well as the benefits of competition. Because a pricing methodology based on forward-looking costs simulates the conditions in a competitive marketplace, it allows the requesting carrier to produce efficiently and to compete effectively, which should drive retail prices to their competitive levels.[24]

All of the benefits identified by the FCC will be endangered if the Commission allows SBC California to create a barrier to entry by charging prices for DALIS that exceed forward-looking economic costs. The new entrant's economic cost for producing the competitive retail service equals the price that it must pay to SBC California for any inputs that it purchases from the incumbent plus the direct economic cost of those inputs that it provides itself. By contrast, SBC's economic cost for producing the same retail service is simply the sum of its direct economic costs for all of the inputs it uses and any retail-only costs caused by that service alone. Thus, if SBC California charges dependent competitors more than its direct economic cost for DALIS, its economic cost of providing the competitive retail service will be lower than the new entrant's cost by an amount equal to the markup in price for DALIS, other things being equal. That creates a barrier to entry.

In turn, the higher economic cost that new entrants face as a result of having to purchase inputs from the incumbent at a price in excess of direct economic cost is an artificial barrier to entry as opposed to a natural barrier to entry. This difference in the direct economic cost of new entrants versus SBC California is not the result of any inherent difference in the underlying cost to society for the use of the same facilities. Thus, SBC California's creation of such a barrier to

[24] *First Report and Order, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (CC Docket No. 96-98); Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers (CC. Docket No. 95-185)*, FCC No. 96-325 (rel. Aug. 8, 1996)

entry denies Californians some of the benefits of local competition that they would receive absent such anti-competitive behavior.

V. SBC California's "Updated" Cost Studies Do Not Provide an Appropriate Benchmark for Cost-Based, Nondiscriminatory Pricing of DALIS.

DALIS is a relatively simple product. The relevant underlying data, *i.e.*, directory listings and listings updates, typically come to SBC California at no cost as a byproduct of its other lines of business. SBC California's retail customers provide their desired listing information when obtaining basic service, and that competitors also typically forward their end-user listings to SBC California at no charge as well (this enables competitors to include their end-users in the dominant SBC-controlled paper directories).[25] Customers expect that their listings will be available and maintained accurately. Thus, maintaining directory assistance listing information and doing any work necessary to make it accurate is part and parcel of the cost of basic exchange service.

The DALIS product consists of regularly pulling new, changed or discontinued listings from a computer database, transmitting it to the DALIS customers and resolving any quality problems (which should be rare) and format changes. Thus, the core of the DALIS product is a simple matter of pulling updated records out of a computer database that is generated as a byproduct of the service order process. As WorldCom witness Mr. Caputo explains in his

(hereafter "*Local Competition First Report and Order*") at ¶ 679.

[25] WorldCom witness Mr. Caputo explains that WorldCom provides its listings to SBC California without charge pursuant to the interconnection agreement between the two companies. Caputo Declaration, ¶ 8. Numerous companies in California have adopted the MCImetro/SBC Pacific Interconnection Agreement.